PEDRO A. SUAZO
ELEANOR G. SUAZO

IBLA 82-994 Decided August 23, 1983

Appeal from decision of Associate District Manager, Albuquerque District Office, Bureau of Land Management, rejecting color-of-title application NM 36205.

Affirmed.

1. Color or Claim of Title: Improvements

   To establish a class 1 color-of-title claim, made under the Color of Title Act, claimed improvements must enhance the value of the land.

2. Color or Claim of Title: Cultivation

   To establish a class 1 color-of-title claim, made under the Color of Title Act, land must be reduced to cultivation at the time of filing the claim application.

3. Color or Claim of Title: Generally

   The obligation to establish a valid color-of-title claim is upon the claimant.

APPEARANCES: Pedro A. Suazo and Eleanor G. Suazo, pro sese; John H. Harrington, Esq., Office of the Solicitor, Field Office, Southwest Region, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Pedro A. and Eleanor G. Suazo appeal the June 18, 1982, decision, of the Associate District Manager, Albuquerque District Office, Bureau of Land Management (BLM), rejecting appellants' color-of-title application NM 36205. The application was filed February 14, 1979, claiming ownership under provision of the Color of Title Act, Act of December 22, 1928, 43 U.S.C. § 1068 (1976), of 4.5 acres of land near Santa Fe, New Mexico. The June 18 decision rejected appellants' claim of ownership because the land failed to show

evidence of either cultivation or improvement required by the regulation implementing the Color of Title Act, 43 CFR 2540.0-5(b). The Departmental regulation divides the statutory claims into two classes:

> A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by the State and local governmental units.

43 CFR 2540.0-5(b). Since appellants' claim of title is based upon conveyances commencing on October 17, 1901, it is clearly not cognizable as a class 2 claim. Appellants presented evidence to BLM employees who examined the land to show that there had been cultivation and improvement of the tract supporting appellants' claim of title. In their statement of reasons, appellants summarize their evidence concerning the basis for their claim as follows:

> You state that the reason for rejecting our application is due to lack of improvements on subject land or any evidence of cultivation. While we have not made any improvements to subject land, we would like to call your attention to the fact that there is still evidence of some improvements, namely fencing around the land--undoubtedly by Celso Suazo (original claimant) perhaps as early as 1901. In this connection, please refer to my letters dated February 18 and 19, 1980, to Yolanda Vega, Realty Technician of your office.
>
> It is my opinion and belief that evidence of cultivation has been eradicated during the course of the years by soil erosion. For further information in this connection, please refer to the notarized statement made on February 24, 1979 by Jose E. Esquibel. His statement clearly indicates that the land had been under cultivation for many years prior to 1936 by Celso Suazo. Information also given by Mr. Esquibel is that he cultivated the land about 1947 and 1948. The record also shows that Jose E. Esquibel and Corina S. Esquibel, his wife sold the property to Jose F. and Cormel S. Archuleta in April 1949. Mr. Esquibel states that Mr. Achuleta planted fruit trees, but [they] did not survive. [Extract from letter July 1, 1982.]
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> * * * * * * *
>
> In connection with additional improvements to the property as shown in the application, you will note that a fence had been

> erected around the 4.5 acres in question, by Celso Suazo, probably in early 1900. The fence posts and the barbed wire show considerable age and [are] badly weather beaten.
>
> Labor and material at the time the fence was erected was much less that the present time, therefore, am unable to give an accurate dollar amount to this improvement. However, my guess would be that labor and material would have been approximately $150.00--$200.00, at least. [Extract from letter dated Feb. 18, 1980.]
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> * * * * * * *
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> Jose E. Esquibel who sold me the property in June 1971, told me that water used for irrigation in the 4.5 acres was stored in a water hole. The water hole was dug by hand and cleaned annually by Celso Suazo and others.
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> I would say that approximately 3-4 hours of labor was done annually. In 30 years it would have taken approximately 120 hours and at $1.25 hr. would be about $140.00 which is deemed as improvement to the property. [Extract from letter dated Feb. 19, 1980.]

The record on appeal contains, additionally, a number of photographs of the tract claimed, and a BLM land report which records the observation of BLM employees who examined the land that

> [t]he applicant claims cultivation on subject lands prior to 1936, in 1947-48 and 1949. He claims fruit trees were planted in 1949 but did not survive. (See notarized document in case file by Jose E. Esquibel dated February 24, 1979). The applicant has not reduced any portion of land to cultivation or added any improvements. The only apparent improvement is a fence which is partially down along the boundary of the subject land and the maintenance of an irrigation ditch along subject land. [Land Report at 9].

Both appellants and BLM are in substantial agreement concerning the circumstances of appellants' holding in this case. It is apparent that there is a dilapidated 80-year old fence, a ditch, and a spring on the tract, which has been cultivated sporadically in the past 80 years, but not recently, and never by claimant appellants.

[1] To be entitled to a patent under provision of 43 CFR 2540.0-5(b), claimants must establish that the requirements for a class 1 claim have been met. For improvements to qualify as valuable improvements within the meaning of the regulation, they must have existed on the land at the time the application was filed, and must enhance the value of the land. Lester and Betty Stephens, 58 IBLA 14 (1981); Lawrence E. Willmorth, 32 IBLA 378 (1977). Appellants offered evidence that the fence was worth, at most, $200 when it was built and that the water ditch might, through expenditure of labor over 30 years, be worth as much as $140, fails to satisfy this requirement, as BLM found. Gladys Lomax, 75 IBLA 89 (1983).

[2] Further, it is apparent that there has been no cultivation of the land by appellants, nor has it been cultivated for more that 30 years immediately preceding appellants' application. Appellants have therefore also failed to meet the requirement of the statute and regulation concerning cultivation. See Bernard R. Snyder, 70 IBLA 207 (1983); Lester and Betty Stephens, supra.

[3] For appellants to establish a valid color-of-title claim to patent of the land which is the subject of this appeal, they must show or at least offer to show that they are able to prove facts which would, under the Color of Title Act, entitle them to the relief they seek. In this case it is apparent, accepting their statements concerning their claim at face value, that they are unable to establish the existence of a valid claim under the statute. By their own admission, the tract which they seek to acquire under the Act has not been improved or cultivated as required by law. Under the circumstances, therefore, BLM correctly rejected appellants' application. 1/

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

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Edward W. Stuebing
Administrative Judge

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Will A. Irwin
Administrative Judge

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1/ The BLM decision also stated, "Action will be taken at a later date to consider this parcel of land for sale to Pedro A. and Eleanor G. Suazo." This is apparently a reference to the District Manager's memorandum of Dec. 3, 1980, wherein he indicates his support for sale of the lands to the Suazos under the provisions of sec. 203 of the Federal Land Policy and Management Act.